

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 15 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAR HUMSHA N RASHANSHA (REGISTERED TRUST)

Versus

KARSANBHAI GAGANBHAI SAIYAL

Appearance:

MS SUBHADRA PATEL FOR MR KG PANDIT for Petitioners

MR AMAR D MITHANI for Respondent No. 2 & 3.

Respondents nos. 1,4,5 and 6 are served.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/06/98

ORAL JUDGEMENT

Heard.

2. Present appeal has been directed against the impugned order dated 19th December, 1996 rendered by the learned Civil Judge, (S.D.), Junagadh below Exh. 5 in Special Civil Suit No. 73 of 1996 whereby the learned trial Judge rejected the injunction application Exh. 5

moved by the present appellant vacating the ex parte status quo order which was granted on 30th July, 1996. The appellants are respectively the registered Public Trust and its Trustees who had filed the suit in question before the trial Court. The appellants filed the suit for obtaining permanent injunction restraining the defendants (respondents herein) from interfering with the possession of the land admeasuring about 303 sq. mtrs. which was not agreed to be sold by the appellants as per the documents mark 4/1 and 4/2 (agreements to sell). The respondents contended that they did not trespass upon any portion of the land which was earmarked as 303 square meters of land not sold by the appellants. The learned trial Judge expressed his view that the appellants prima-facie failed to show the location of 303 square meters of land alleged by them. In fact, the learned trial Judge came to the conclusion that there was misrepresentation of facts with regard to the actual location of 303 square meters of land earmarked as not sold by the appellants. That is how the injunction application came to be rejected by the learned trial Judge. The appellants have subjected the said order under challenge in this appeal from order.

3. The appellants also moved civil application no. 132 of 1997 in this appeal from order and this Court (Coram : K.R.Vyas,J.) by order dated 26th February, 1997, directed both the sides to maintain status quo with respect to the land in possession of the appellants and admeasuring about 303 square meters. That is how the said civil application was disposed of with no order as to costs.

4. The appellants had an occasion to move miscellaneous civil application no. 1986 of 1997 for taking steps in respect of the alleged breach of injunction issued by this court in the aforesaid civil application, by taking recourse to Order 39, Rule 2A of the Code of Civil Procedure, 1908. This Court had an occasion to hear the said miscellaneous civil application on merits and by order dated 26th March, 1998, this Court (Coram:R.Balia,J.) rejected the said application and the notice was discharged. It was, inter-alia, found that in fact, there was no interference with the vacant land admeasuring 303 square meters of land as reflected by the Commissioner's report dated 3rd October, 1996.

5. Under the circumstances, this appeal from order has come up for final hearing before this Court. After some amount of submissions, reference has been made to the registered sale deed dated 20th July, 1992 executed

by the appellants in favour of the purchasers (respondents No. 1, 2 and 3 herein) According to this sale deed and the map annexed therewith, location of 303 square meters of land earmarked as not sold by the appellants becomes clear. However, the appellants have not been able to point out any other location of such land apprehended to be encroached upon by the respondents. In view of this situation, Mr. Mithani appearing for the respondents NO. 2 and 3 makes a statement that the said respondents will not encroach upon 303 square meters of land earmarked in the map annexed with the registered sale deed dated 20th July, 1992 and will not make construction thereon. It is, however, clarified that respondent No. 2 and 3, by making such a statement through Mr. Mithani, do not incur any liability nor do they admit any part of the appellants' case in the suit. In my opinion, in view of this statement, nothing should survive in this appeal from order.

6. The result is that this appeal from order is required to be dismissed. Order accordingly. No order as to costs.

Vyas